United States Court of Appeals

for the Second Circuit

APPENDIX

76-6004

In the

United States Court of Appeals

FOR THE SECOND CIRCUIT

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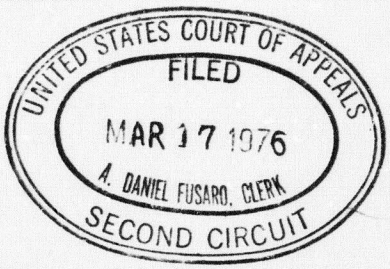

No. 76-6004

NELLIE T. GOFF
Plaintiff-Appellant

vs.

CASPER WEINBERGER
SECRETARY OF HEALTH, EDUCATION AND WELFARE
Defendant-Appellee

On Appeal from the United States District Court
for the District of Connecticut

APPENDIX

JEREMIAH M. KEEFE,
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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

Date	
1974	
9-11	Complaint filed.
11-26	Motion for Extension of Time filed by defendant. GRANTED. (Clarie, J.) 11-26-74.

1975

1-17 Answer filed.

1-17 Transcript of proceedings before Appeals Council of H.E.W.

6-13 Defendant's Motion for Summary Judgment.

6-13 Defendant's Memorandum in Support of Motion for Summary Judgment.

6-24 Motion for Extension of Time to File Brief in Opposition to Defendant's Motion for Summary Judgment. "Motion for Extension is granted as requested."

8-25 Plaintiff's Motion for Summary Judgment.
8-25 Plaintiff's Memorandum in Support of Summary Judgment.

8-25 Appearance of Robert C. Johnson entered for the Plaintiff.

10-6 HEARING on Plaintiff's Motion & Defendant's Motion for Summary Judgment, DEC. RESERVED.

10-6 Plaintiff's Supplemental Memorandum in Support of Summary Judgment.

10-17 Ruling on Cross Motions for Summary Judgment, Clarie, J. m 10-17-75. (Defendant's Motion granted)

10-21 Defendant's Supplemental Memorandum in Support of Summary Judgment.

11-28 JUDGMENT entered

12-9 Transcript of Hearing held on 10-6-75, Sperber, R.

12-30 Notice of Appeal filed by Plaintiff.

RULING ON CROSS-MOTIONS

FOR SUMMARY JUDGMENT

This action was brought pursuant to § 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), requesting judicial review of a final decision of the Secretary of Health, Education and Welfare. The Appeals Council reversed the Administrative Law Judge's decision, which had allowed dependents' insurance benefits to the plaintiff and her children retroactive to March 31, 1959. The case comes before the Court on cross-motions for summary judgment pursuant to Rule 56, Fed. R. Civ. P. No remaining factual issues exist to be resolved and the case can now be decided as a matter of law. The legal issue presented is whether or not the record contains substantial evidence to support the Secretary's denial action of survivor's insurance benefits for any month prior to January, 1970; and whether or not any valid application was filed with the Social Security Administration prior to January, 1971. The Court finds that the Secretary's findings are supported by substantial evidence and his decision is therefore affirmed.

Facts

At the time of Clayton E. Wooley's death, he was married to the plaintiff, Nellie T. Goff. He died on March 31, 1959 from injuries suffered during the course of his employment by the State of Connecticut and was covered at the time by Workmen's Compensation. At that time the couple had three living children, a stepchild, Jane (Woolley) Turgeon, born June 1, 1949, married during May 1969; James Woolley, born February 3, 1953, and Patricia Woolley, born October 19, 1955.

The plaintiff concedes that no written application for Social Security benefits was formally filed in writing in behalf of the children until January 28, 1971. The defendant awarded payments for one year retroactively back to January, 1970, to the

two minor children, James and Patricia, both of whom were under 18 years of age.

The plaintiff thereafter married her present husband, Joseph P. Goff, in 1962. She complains that she and the children should have been qualified to receive benefits commencing on March 31, 1959. Immediately after the death of her husband on March 31, 1959, she applied under Connecticut State Law § 5-144, for Workmen's Compensation and received an award for herself and said children. For that purpose she was represented by retained counsel and consulted him on the question of whether or not she and the children were entitled to receive Social Security Benefits. The attorney stated in an attached affidavit, that he had telephoned the New Britain Social Security Office sometime during July, 1959, to inquire as to the family's eligibility and was informed by a Social Security employee, that since she and the children were already receiving benefits under the State Workmen's Compensation Act, they did not qualify for Social Security insurance benefits.

She now claims that since she was dissuaded from filing in 1959, through the alleged false advice given by an employee of the agency to her attorney, the latter's oral inquiry should be considered tantamount to a written statement of intent to file an application for benefits, as required by § 404.613 of Regulation No. 4. In fact, the Administrative Law Judge here made his finding that the oral telephone inquiry made by the plaintiff's attorney, of which no record could be found, constituted a lawful statement of intent, within the meaning of the Social Security regulations and justified a finding that the claim of the mother and children was valid and effective on March 31, 1959.

Discussion of Law

Title 42 U.S.C. § 405(a) vests in the Secretary the right to make and promulgate procedural regulations to administer the Act. [1]/Under these regulations, 20 C.F.R. § 404.601(d) provides:

> ". . . an individual has not 'filed an application' for purposes of sections 202, 216(i), or 223 of the Act . . . until

> an application on a form prescribed in § 404.602 has been filed in accordance with the regulations in this subpart."

20 C.F.R. § 404.601(e) provides:

> "The term 'to execute an application' (or a written statement, request, or notice . . .) means the completion and signing of the application (or written statement, request, or notice). . . ."

In furtherance of the foregoing policy, § 404.613 of these regulations provides, that if an individual files a written statement with the Social Security Administration, which indicates an intention to claim benefits and such statement bears his signature, the filing of such statement shall be considered to be the filing of an application for such benefits. Thus the administrative purpose of the Act and its supporting regulations were specifically designed to assure, that only a written expression of intent to claim Social Security benefits should be accepted and considered as a valid application under the law. This case is clearly distinguishable from the case of **Tuck v. Finch,** 430 F. 2d 1075 (4th Cir. 1970), cited by the plaintiff, and the plaintiff concedes that no written record exists in the Social Security office to confirm that an application, written or oral, was ever filed.

The Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion, and laxity in its administration. The vastness of the program makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims and paying out insurance benefits.

The plaintiff claims that the defendant is estopped from denying relief, because the agency's own employee dissuaded her from filing a written application. Furthermore, she claims that since the Administrative Law Judge, its own agency employee, found in her favor, the Government has thereby waived any procedural non-compliance by her in failing to file the required written application.

The Government cannot be estopped in this manner from insisting upon the performance of statutory conditions precedent, by the unauthorized acts of a local Social Security office employee.

> "But even assuming that he did receive 'misinformation' on which . . . acted to her detriment, it is plain that estoppel will not lie against the Government under these circumstances. Parties dealing with the Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations despite reliance to their pecuniary detriment upon incorrect information received from Government agents or employees. Failure to comply with the applicable statute and regulations precludes recovery against the Government 'no matter with what good reason' the claimant believed she had come within the requirements. Estoppel will not lie regardless of the financial hardship 'resulting from innocent ignorance.' **Federal Crop Insurance Corp. v. Merrill,** 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10; **Walker-Hill Co. v. United States,** 162 F.2d 259 (7 Cir. 1947), cert. den. 332 U.S. 771, 68 S.Ct. 85, 92 L.Ed. 356; **James v. United States,** 185 F.2d 115, 22 A.L.R. 2d 830 (4 Cir. 1950)." **Flamm v. Ribicoff,** 203 F.Supp. 507, 510 (S.D.N.Y. 1961).

Also see, **McIndoe v. United States,** 194 F.2d 602, 603 (9th Cir. 1952); and **Taylor v. Flemming,** 185 F.Supp. 280, 284 (W. D. Arkansas 1960).

While the Administrative Law Judge found that the telephone inquiry made by the plaintiff's attorney constituted a statement of intent on the part of the plaintiff to file for benefits within the meaning of § 404.613, that conclusion was in fact an interpretation of a rule of law applied to the factual circumstances as the judge found them. To press beyond and claim that his ruling, as an employee of the agency, constituted an actual waiver of the defendant's position, so as to estop it from denying benefits, would destroy the quasi-judicial character of the Administrative Law Judge. It would also unduly curb the Secretary's clear statutory right to an effective review of final rulings, pursuant to 42 U.S.C. § 405(b). This statute provides in part:

> "The Secretary is further authorized, **on his own motion,** to hold such hearings and conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title." (Emphasis added).

Such a construction would also unduly limit the right to a full judicial review under 42 U.S.C. § 405(g); a result never contemplated by the Congress.

The factual situation found to exist here does not conform to the essential requirements of the Social Security Regulations, 20 C.F.R. §§ 404.602 and 404.613. Failure of the plaintiff to file a timely application under the rules is not simply a non-essential procedural requirement, it is a substantial and basic requirement of the regulations.

> "In examining the regulations promulgated by the Secretary of Health, Education, and Welfare, the Court refers to pertinent provisions of 20 C.F.R. § 404.601 et seq. Under § 404.601, it is required that an individual file an application on a form prescribed by the Administration. Section 404.607(b) provides for benefits retroactive for one year from the date of filing. Section 404.608 sets out the guideline that a written statement, request, notice or application is deemed 'a filing,' but only on the date it is received by the local office. In addition, such a statement must be reduced to the prescribed form within certain periods for it to be effective." **Parker v. Finch,** 327 F.Supp. 193, 195 (N.D. Ga. 1971).

The defendant Secretary is charged with the duty to weigh the evidence, to resolve material complaints in the testimony and to determine the cases accordingly. **Moss v. Gardner,** 411 F.2d 1195 (4th Cir. 1969) **Staples v. Gardner,** 357F. 2d 922 (5th Cir. 1966); **Stumbo v. Gardner,** 365 F.2d 275 (6th Cir. 1966); **Rhinehart v. Finch,** 438 F.2d 920 (9th Cir. 1971). The findings of the Secretary are conclusive, if supported by substantial evidence and a proper application of the law.

The Court adopts the findings and decisions of the Appeals Council (Tr. 4-10) as affirmed by the Secretary of Health, Edu-

cation, and Welfare. The Court finds that the Secretary's determinations were supported by substantial evidence, as required under § 205(g) of the Social Security Act, 42 U.S.C. § 405(g). **Newman v. Celebreeze,** 310 F.2d 780 (2d Cir. 1962); **Dondero v. Celebrezze,** 312 F.2d 677 (2d Cir. 1963).

The defendant's motion for summary judgment is granted. SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of October, 1975.

T. Emmet Clarie
Chief Judge

FOOTNOTE

[1] 42 U.S.S. § 405(a) provides:

"**Rules and regulations.** The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."

SOCIAL SECURITY ADMINISTRATION

Bureau of Hearings and Appeals

DECISION OF APPEALS COUNCIL

In the case of:
Nellie T. Goff for self and o/b/o
Jane W. Turgeon, James and Patricia Wooley
(Claimant)
Clayton Wooley
(Wage Earner)

Claim for:
Mother's Insurance Benefits
Child's Insurance Benefits
048-20-6929
(Social Security Number)

This case is before the Appeals Council on its own motion to review the decision of the administrative law judge issued on March 11, 1974. The Appeals Council notified the claimant and her representative of this action and of her rights with respect thereto.

Mr. Jeremiah M. Keefe, Esquire, the claimant's representative, appeared before the Appeals Council on June 4, 1974 and presented oral argument on behalf of the claimant.

In his decision, the administrative law judge found that an oral inquiry, concerning the payment of benefits to the claimant and her children, made in 1959, by her then representative, constituted a written statement of intent to file a claim for benefits as required by section 404.613 of Regulations No. 4 of the Social Security Administration and that the claimant and her children were entitled to mother's and child's insurance benefits, respectively, beginning March 1959.

Evidence in addition to that considered by the administrative law judge has been entered into the record by the Appeals Council as follows:

Exhibit AC-1 Copy of affidavit signed by Bernard F. Grabowski dated April 10, 1974.

ISSUES

The general issue before the Appeals Council is whether mother's and child's insurance benefits are payable to the claimant for any month prior to January 1970. Specifically at issue is whether an oral inquiry made in 1959 constituted a statement of intent to file an application for benefits as prescribed in section 404.613 of Regulations No. 4.

LAW AND REGULATIONS

Section 202(d) of the Social Security Act provides, in pertinent part, for the entitlement to child's insurance benefits of a child who, among other requirements, has filed an application for child's insurance benefits and who is not married.

Section 202(g) of the Act provides, as pertinent herein, for the entitlement to mother's insurance benefits of a widow of the wage earner who, among other requirements, has filed an application for mother's insurance benefits and who is not married.

Section 202(j)(1) of the Act provides that the retroactivity of an application for monthly benefits shall be limited to 12 months prior to the month of filing of the application.

Section 205(a) of the Act provides that:

"The Secretary shall have full power and authority to make rules and regulations and to establish proce-

> dures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder."

Section 404.601(b) of Social Security Administration Regulations No. 4 provides, in pertinent part, that the term "applicant" refers to the individual who has filed an application on his own behalf or on behalf of another for monthly benefits. Section 404.601(c) of the regulations indicates that the term "application" refers only to an application on a form prescribed in section 404.602 and includes an application for monthly benefits. Section 404.601(d) provides that an individual has not "filed an application" for purposes of section 202 of the Act until an application on a form prescribed in section 404.602 has been filed in accordance with the regulations in Subpart G. Section 404.601(e) of the regulations provides that the term "to execute an application" means the completion and signing of the application (or written statement, request, or notice).

Section 404.608(a) of the regulations provides, in pertinent part, that an application (or written statement, request or notice) is considered to have been filed only as of the date it is received at an office of the Social Security Administration or by an employee of the Administration who has been authorized to receive such application at a place other than such office. Section 404.610 provides that any request for a determination or decision relating to a person's right to monthly benefits shall be in writing.

Section 404.613 of the regulations provides, in pertinent part, that where an individual filed a written statement with the Administration that indicates an intention to claim monthly benefits and said statement bears his signature, the filing of said written statement is considered to be the filing of an application for such purposes, provided a prescribed application is filed by such individual within 6 months of the date of the date of notice of the requirement therefor.

EVIDENCE CONSIDERED

The Appeals Council has carefully studied all the testimony at the hearing, the arguments made, and the exhibits of record.

EVALUATION OF THE EVIDENCE

The claimant filed an application for child's insurance benefits on January 28, 1971. The wage earned died fully insured on March 31, 1959. Benefits were awarded effective January 1970 to James, born on February 3, 1953, and Patricia, born on September 19, 1955. The claimant, who was married to the wage earner at the time of his death, remarried in 1962. The claimant requested reconsideration maintaining that benefits should be payable beginning March 1959 because the claimant had been dissuaded from filing in 1959 by her then representative. Upon reconsideration it was determined that no application had been filed prior to the one dated January 28, 1971 and that benefits could begin no earlier than January 1970.

The record reflects no oral or written inquiry ever having been made prior to the January 1971 application. The claimant's attorney at the time of the wage earner's death, Benjamin Grabowski, alleges that he telephoned the New Britain, Connecticut Social Security Office, and was informed that no benefits were payable because workmen's compensation benefits were being paid to the claimant and her children (Exhibits 20 and AC-1). This conversation allegedly took place in 1959, shortly after the wage earner's death.

As to whether a valid application exists based on the alleged oral inquiry, section 404.613 of Regulations No. 4 clearly requires a **written statement** indicating intent to claim benefits. Moreover, Social Security Ruling 66-17c, C.B. 1966, p. 39, clearly indicates that an oral inquiry is insufficient to constitute the filing of an application. In this Ruling, an individual inquired orally in February 1956 as to whether she qualified

for widow's insurance benefits, and was advised of the deceased worker's lack of insured status and of her ineligibility. She subsequently filed a written application for benefits in May 1962, and submitted evidence which was sufficient to establish additional earnings for the worker, giving him an insured status as of his date of death. It was held that the oral inquiry did not constitute the filing of an application since applications for benefits must be in writing and that the Social Security Administration cannot be stopped from asserting the requirements for entitlement to benefits.

In addition, the great weight of the court decisions support the Social Security Administration's policy, as reflected by the Ruling (supra), with regard to what constitutes an application. The requirement of the regulations that an application must be in writing and that an oral claim cannot constitute an application has been held to be a proper exercise of regulatory authority. **Smaltz v. Ribicoff,** CCF UIR, Fed. para. 14,632 (W.D. Mo., 9/27/62). Where there is no record of a written request for benefits, the claimant has not established a condition precedent for entitlement. **Graham v. Celebrezze,** CCH UIR, Fed. para. 16,146 (W.D. Mo., 12/18/63). The filing of a written statement of intention to claim benefits is a minimum requirement for entitlement to benefits. **Mandelstram v. Celebrezze,** CCH UIR, Fed. para. 14,733 (E.D. N.Y. 3/16/67). See also, **Emerson v. Celebrezze,** CCH UIR,Fed. para. 14,237 (M.D. Ga., 6/7/65); **Flamm v. Ribicoff,** 203 F. Supp. 507 (1961); **Hilton v. Celebrezze,** CCH UIR, Fed. para. 14,315 (S.D. W. Va., 1/11/66); **Stiel v. Celebrezze,** CCH UIR, Fed. para. 16,235 (E.D. Mo., 6/14/64); SSR 63-37c (C.B. 1963, p. 1[illegible]). Also, it is well established that the government cannot be estopped by the actions of its agents from requiring compliance with statutory conditions of entitlement. See **Caldwell v. Celebrezze,** CCH UIR, Fed. para. 14,650 (1962) and **Taylor v. Flemming,** 186 F. Supp. 280 (1960).

The claimant's representative contends that the decision of the U.S. Court of Appeals for the Fourth Circuit in the case

of **Tuck v. Finch,** 430 F. 2d 1975 (1970) is applicable to the case at hand. The question in that case was whether Mr. Tuck acquired 4 quarters of coverage in 1961 to meet the insured status requirements for disability purpose. By finding that Mr. Tuck filed an application for benefits in February 1965, when he had inquired orally at a social security office about benefits, the Court was then able to indicate that the Secretary could change his records **of Tuck's self-employment income in 1961 under section 205(c)(5)(A) of the Act** inasmuch as the February 1965 "application" tolled the statute of limitations until a "final" decision was made thereon. Thus, **Tuck** involved a question of the filing of an application for purposes of section 205(c)(5)(A) rather than for purposes of entitlement under sections 202(d) and 223(g) of the Act.

The relevant portion of the Circuit Court's decision is as follows:

> "The Secretary has prescribed applications forms for disability insurance benefits. 20 CFR sections 422.501 and .505. Ordinarily an application made on this form will conclusively establish the date it was filed. Use of a form, however, does not appear to be mandatory, and its absence does not conclusively establish that no application was made, especially when the applicant is illiterate. Here the Secretary's own records affirmatively show that in February 1965, Tuck asked about receiving Social Security benefits and that an official of the Social Security Administration discussed his application with him. While a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred.
>
> * * *
>
> We hold, therefore, that Tuck's oral request for benefits and the records of the Secretary establish that in February 1965 Tuck made an application for monthly benefits. Therefore, under section 205(c)(5)(A) of the Act, the Secretary may change his records so they will correctly reflect the number of quarters of coverage to which Tuck is entitled."

It is quite clear that a distinguishing factor in **Tuck** is that the Secretary's records corroborated his claim that he "applied" for disability benefits in February 1965, and that, as an illiterate, an oral inquiry would be the manner in which he would apply for benefits. In the instant case, there is no record of the alleged oral inquiry and neither the claimant nor Mr. Grabowski could be considered to be illiterate. It would, therefore, appear because of the dissimilarities in the two cases (**Tuck** and the one at hand), that the court's findings in the **Tuck** case are not applicable to the present proceeding. Moreover, the Social Security Administration has not acquiesced in the **Tuck** decision nor has it effected any policy changes based on that decision.

The administrative law judge was clearly in error in finding that the alleged oral inquiry made by Mr. Grabowski in 1959 was the equivalent of the written statement required by section 404.613 of Regulations No. 4. The only valid application for monthly benefits in this case was filed on January 28, 1971.

FINDINGS AND CONCLUSIONS

OF THE APPEALS COUNCIL

In summary, the Appeals Council makes the following findings and conclusions:

1. The alleged oral inquiry made by Mr. Grabowski does not constitute a written statement of intent to file an application for benefits as required by section 404.613 of Regulations No. 4.

2. Pursuant to section 202(j)(1) of the Act, the application filed on January 28, 1971 can be retroactive only to January 1970.

3. The claimant, Nellie T. Goff, is not entitled to mother's insurance benefits, having remarried in 1962.

4. Jane W. Turgeon married in May 1969 and is, therefore, not entitled to child's insurance benefits based on the application filed on January 28, 1971.

5. James and Patricia Woolley are entitled to child's insurance benefits beginning January 1970 based on the application filed on January 28, 1971.

DECISION

The decision of the administrative law judge is reversed. It is the decision of the Appeals Council that Nellie T. Goff is not entitled to mother's insurance benefits; that Jane W. Turgeon is not entitled to child's insurance benefits; and that James and Patricia Woolley are entitled to child's insurance benefits beginning January 1970 and for no prior month.

APPEALS COUNCIL

Joseph E. Doneghy, Member
Norman S. Kerns, Member
Herman Elegant, Member

Date: July 22, 1974

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

P.O. Box 2518, Washington, D.C. 20013

Bureau of Hearings and Appeals

Refer to:
HA: C
048-20-6929
Mrs. Nellie P. Goff
286 Fall Mountain Road
Bristol, Connecticut 06011

Dear Mrs. Goff:

The Appeals Council, on its own motion, has decided to review the hearing decision on your claim.

The issues before the Appeals Council will be whether you are entitled to mother's insurance benefits and whether your children are entitled to child's insurance benefits beginning March 1959. Specifically at issue will be whether the oral inquiry allegedly made in 1959 concerning the possibility of entitlement to survivor's benefits constitutes a "written intent" to claim benefits as required by section 404.613 of Regulations No. 4 of the Social Security Administration.

If you have any evidence not previously supplied, or wish to make a further written statement as to the facts and law in your case, you may submit either or both by mail to the Appeals Council. You should do so within 20 days from the date of this letter, or inform us within that time when it may be expected.

If you desire, you may appear in person before the Appeals Council in Arlington, Virginia, to present oral argument of your case. Or, you may have someone represent you and appear, either with you or alone, for this purpose. If you and/or your representative want to appear, please inform us within 20 days from the date of this letter, and you will be sent a notice of the time and place of such appearance. You need not write to us if you do not want to appear or if you do not want to submit anything additional.

The decision of the Appeals Council will be based upon the facts disclosed by all the evidence and the provisions of law which must be applied in your case.

Sincerely yours,

Member, Appeals Council

DEPARTMENT OF

HEALTH, EDUCATION, AND WELFARE

Social Security Administration

Bureau of Hearings and Appeals

HEARING DECISION

In case of
Nellie T. Goff on her own behalf and
o/b/o the children of Clayton Woolley
(Claimant)
Clayton Woolley (Deceased)
(Wage Earner)

Claim for
Mother's Insurance Benefits
Child's Insurance Benefits
048-20-6929
(Social Security Number)

This case being properly before the undersigned Administrative Law Judge was heard in Hartford, Connecticut on December 19, 1973. The claimant appeared personally and testified. She was represented in the hearing by her attorneys, Jeremiah M. Keefe and Leonard P. Coviello. The claimant's present husband, James Goff, was also present.

The claimant, on January 28, 1971, filed an application for surviving child's insurance benefits in which she listed as surviving children of Clayton Woolley (who died on March 31, 1959), James Woolley (born February 3, 1953), Patricia Woolley (born October 19, 1955), and Jane (Woolley) Turgeon (born June 1, 1949 and married May 10, 1969). Benefits for James Woolley and Patricia Woolley were awarded on April 14, 1971.

In the letter dated July 29, 1971 (Exhibit 9 — deemed to be the request for reconsideration the claimant expanded this case to constitute application for:

(a) child's insurance benefits for James Woolley and Patricia Woolley from March 1959;

(b) child's insurance benefits for Jane (Woolley) Turgeon from March 1959 to May 1969);

(c) mother's insurance benefits for herself from March 1959 to November 1962.

Inasmuch as the initial determination allowed child's insurance benefits for James and Patricia from January 1970, in effect as to these two children the request for reconsideration contained request that the date of entitlement for each of them be changed from January 1970 to March 1959, which if approved would provide lump sum payment for benefits accrued during the period March 1959 through December 1969.

Section 202(d) of the Social Security Act provides for the payment of monthly benefits to the qualified child of an insured individual who has filed an application.

Section 202(j) of the Social Security Act and Regulations No. 4, Section 404.607 of the Social Security Administration limit the retroactivity of an application for monthly benefits to twelve months before the month of filing.

Section 404.608 of Regulations No. 4 provides that an application is considered to be filed as of the date it is received by the Social Security Administration.

Section 404.613 of the Regulations provides that if an individual files a written statement with the Social Security Administration which indicates an intention to claim benefits and such statements bears his signature, the filing of such statement shall be considered to be the filing of an application for such benefits.

The purpose of that Section 404.613 is to provide a flexibility in giving effect to the congressional intent that persons having a **bona fide** claim shall not be denied that claim merely because of a failure to satisfy the technicalities irrespective of how necessary for the orderly processing of the great mass of paper work involved in the administration of the Social Security Act. In formulating Section 404.613, as a practical matter it was recognized that only a written expression or indicaton of ntent to claim Social Security Benefits should be accepted as being an application for such benefits because oral statements and responses thereto tend to be ambiguous and subject to gross misunderstanding even though everyone involved is acting in great good faith. Thus, the purpose of requiring that the statement be in writing is that a reasonable degree of certainty as to facts be established before determinations are made pursuant to which substantial payments will be made out of the Social Security trust funds.

On the total hearing record the Administrative Law Judge finds that if within one year following the death of Clayton Woolley application had been filed covering these parties, the full range of benefits here requested would have been allowed and paid starting on (effective date) March 31, 1959.

The claimant now requests, in effect, that the inquiry made by the attorney for her late husband's estate (then acting for her and the children) be treated as being an application filed within the meaning of the Social Security Act as of the date of the said inquiry which was made within one year after the date of death of Clayton Woolley.

By letter dated January 3, 1974 (Exhibit 21) Bernard F. Grabowski, Esquire, stated:

> "I represented her interest in the Estate of Clayton E. Woolley and her brother-in-law, Francis J. Englert, served as Administrator of said Estate.
>
> "Upon completing her hearing for Workmen's Compensation and other benefits under Section 5-144 of the Con-

necticut General Statutes, she made inquiry of me as to whether or not she and her children were entitled to Social Security benefits. I checked into the matter and phoned the Social Security office in New Britain, Connecticut. I made inquiry at the office as to whether or not under the fact situation involved she and her children would be entitled to benefits. I was advised that by reason of Workmen's Compensation benefits being available to her and her children, neither she nor her children were entitled to Social Security benefits.
"I so informed her. She took no further action on this matter."

On the record now before the Administrative Law Judge, he is persuaded and hence hereby finds for purposes of this proceeding that former Congressman Grabowski did (promptly after completing the hearing under Section 5-144 of the Connecticut General Statutes) make —

> "inquiry at the (New Britain Social Security) office as to whether or not under the fact situation involved she and her children would be entitled to benefits,"

and the Administrative Law Judge also hereby finds that Congressman Grabowski was advised by an employee in that Social Security office acting in the scope of his or her employment that —

> "by reason of Workmen's Compensation benefits being available to her and her children, neither she nor her children were entitled to Social Security Benefits."

The date of that inquiry is not clear, but for present purposes is fixed as being the date of completion of the mentioned hearing (proceeding) under said Section 5-144, which date was on (or about) July 31, 1959.

Thus, for purposes of this proceeding, it is established that the inquiry was in fact made by Congressman Grabowski acting as attorney for the claimant and the children here involved, at a determinable date, and that by error or mistake of an employee of the Social Security Administration, the attorney was

advised that neither the claimant nor the children were entitled to receive Social Security benefits, and, but for this error or mistake, a formal application would have been filed immediately and based thereon as of March 31, 1959, the claimant and each of the three children would have been awarded Social Security benefits under the account of Clayton Woolley 048-20-6929. In short the widow (claimant) was entitled to receive mother's insurance benefits and each of the three children were entitled to receive child's insurance benefits, starting on (effective date) and would have but for the mentioned error or mistake by an employee in the Social Security District Office involved.

It is believed by the Administrative Law Judge, and therefore found, that if the inquiry made by former Congressman Grabowski had been made in writing it would have been deemed to be a statement of intent to file application for whatever mother's insurance benefits the claimant might be entitled to receive and for whatever child's insurance benefits each or any of the three children might be entitled to receive; therefore if that inquiry by Congressman Grabowski had been in writing it would have been considered for all purposes as Constituting an application for those benefits. The Administrative Law Judge believes, and therefore finds, that in the hearing record of this case there is a substantial degree of certainty that Congressman Grabowski did in fact make the stated inquiry on (or about July 31, 1959), that it was not ambiguous, that said inquiry in fact constituted a statement of intent to claim all social security benefits which might be due to the claimant and to each of the three children, and that said statement of intent (although long allowed to remain dormant because of the mistake or error by a Social Security employee) was revived as soon as the claimant had reason to believe such an error may have been made.

The purpose of Section 404.613 in requiring such statements intention to be in writing having been fully satisfied in this case that requirement is hereby waived.

Accordingly, the Administrative Law Judge finds that the inquiry made by Congressman Grabowski constituted a statement of intent within the meaning of Section 404.613, and by construction constituted an application for mother's insurance benefits for the claimant and child's insurance benefits for each of the three children, all as of March 31, 1959. The Administrative Law Judge further finds that these applications should be and hereby are allowed in full with an effective date for each as of March 31, 1959. The Administrative Law Judge further finds that the claimant individually was entitled to receive mother's insurance benefits for the period March 31, 1959 to November 1962; that the daughter, Jane (Woolley) Turgeon, was entitled to receive child's insurance benefits from March 31, 1959 to May 1969; and James Woolley and Patricia each were entitled to receive child's insurance benefits from March 31, 1959.

It is the decision of the Administrative Law Judge that the applications for mother's insurance benefits and for child's insurance benefits, as above specified and discussed, are each allowed with an effective date of March 31, 1959.

Thomas E. Bennett
Administrative Law Judge

March 11, 1974

D/ W/C: Clayton Woolley
048-20-6929
286 Fall Mt. Rd.
Bristol, Ct 06010

Attention Miss Wax: July 29th 1971

I have been recieving State checks, for my children Patricia who is 15 and Jones who turned 18 in Feb. (his stops at the age 18) I was shocked when I found out, that the kids should have been recieving benefits all this time, (and also my oldest daughter Jane Surgue - married now.)

I was told at the New British office, I should also have recieved a lump sum.

We were both very young and very much in love, when my husband accidentdy fell from a tree at work, and died almost instantly. I was left with the three kids.

I was in a state of shock for quite a while.

Bernard Grabowski a reputable attorney here in Bristol handled all the arrangements. He told me that if I was recieving help from the State, I was not entitled to Social Security benefits. This is the reason I had not applied. I think that since I haven't received help all these years, that I am entitled to at least the lump sum.

I am so sorry for not looking into this matter sooner I could kick myself. My oldest girl wore second hand clothes all her school years. These two girls will at least have new winter coats this year.

I hope you can help me.

Sincerly
Nellie P. Goff

HANRAHAN, GRABOWSKI & HAYES

Attorneys at Law

583 Farmington Avenue

Bristol, Connecticut 06010

January 3, 1974

Honorable Thomas Bennett
Administrative Law Judge
Department of Health, Education and Welfare
Social Security Administration
U.S. Government
Washington, D.C.

Dear Judge Bennett:

Re: Nellie P. (Woolley) Goff

I have been informed that Nellie P. Goff has filed an appeal regarding Social Security benefits for herself and her minor children which has been heard by yourself or will be heard by you in the very near future.

This letter is to verify that Nellie P. Goff was married to Clayton E. Woolley and that they had three minor children at the time of his death. Clayton E. Woolley met an untimely death in the course of his employment with the State of Connecticut Highway Department. At the time of his death they had three minor children:

Jane Nellie Wooley, born on June 1, 1949;
James Clayton Woolley, born on February 3, 1953; and
Patricia Irene Woolley, born on September 19, 1955.

At the time of Clayton E. Woolley's death, his wife, Nellie,

was not employed and all three children were below the age of eighteen years.

I represented her interest in the Estate of Clayton E. Woolley and her brother-in-law, Francis J. Englert, served as Administrator of said Estate.

Upon completing her hearing for Workmen's Compensation and other benefits under Section 5-144 of the Connecticut General Statutes, she made inquiry of me as to whether or not she and her children were entitled to Social Security benefits. I checked into the matter and phoned the Social Security office in New Britain, Connecticut. I made inquiry at the office as to whether or not under the fact situation involved she and her children would be entitled to benefits. I was advised that by reason of Workmen's Compensation benefits being available to her and her children, neither she nor her children were entitled to Social Security benefits.

I so informed her. She took no further action on this matter.

In January of 1971, she heard a radio or a television broadcast which stated that benefits might be available to a person in her situation.

In the interim she married Joseph Goff in November, 1962. Her oldest child reached majority before January, 1971. This oldest child married in 1969. The broadcast she heard coupled with the birthday of her son in February, 1971, causing her to inquire of the Social Security Department in New Britain. She was advised by Mrs. Was that she was entitled to benefits and could have been receiving benefits from 1959. Having acquired this information she returned to my office and so advised me. I informed her that I had made inquiry upon the completion of our Workmen's Compensation matter of the Social Security office and was informed that no benefits were available to her.

She informed me that she would make a request for Social Security benefits in the very near future which she has done.

I write this letter to make the facts available to you, your Honor, so that you can decide the matter on its merits; if indeed she is entitled to Social Security benefits for contributions made by her husband the cause of justice would be served in her and her children receiving retroactive benefits.

If you have any further questions of me, your Honor, I would be too glad to answer them.

Very truly yours,

Bernard F. Grabowski

AFFIDAVIT

STATE OF CONNECTICUT)
) ss. Bristol
COUNTY OF HARTFORD)

Personally appeared BERNARD F. GRABOWSKI, an attorney authorized to practice law in the State of Connecticut who, upon being duly sworn, deposes and says:

(1) That he believes in the obligation of an oath;
(2) That he is over the age of 18 years;
(3) That he represented the interests of Nellie P. Goff, widow of Clayton E. Woolley, individually and as mother of three minor children, after the death of Clayton E. Woolley, who died on March 31, 1959;
(4) That in the course of said representation, he appeared before the Workmen's Compensation Commission of Connecticut, and represented in proceedings under Sec. 5-144 of the Connecticut General Statutes;
(5) That upon completion of the hereinbefore mentioned proceedings, he was consulted by Mrs. Goff relative to her eligibility, individually and for her minor children, under the Social Security Act;
(6) That pursuant to said inquiry, he inquired into the matter and telephoned the Social Security Office in New Britain, Connecticut;
(7) That he was advised by an employee of the New Britain Social Security Office that, pursuant to the Workmen's Compensation Commission benefits being available to Mrs. Goff and her minor children, neither she nor her children were entitled to Social Security benefits;
(8) That the specific date of his inquiry at the Social Security Office in New Britain is uncertain, but that it is certain that it was in the month of July, 1959.

Bernard F. Grabowski

Subscribed and sworn to before me this 10th day of April, 1974

James E. Hayes
Commissioner of Superior Court